

**Executive Summary – Enforcement Matter – Case No. 42212**  
**Jackie Wheeler and Becky Wheeler**  
**RN101798312**  
**Docket No. 2011-1357-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Faught Country Store, 59 County Road 44105, Paris, Lamar County

**Type of Operation:**

Property with four underground storage tanks ("USTs")

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** December 30, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$8,667

**Amount Deferred for Expedited Settlement:** \$1,733

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$214

**Total Due to General Revenue:** \$6,720

Payment Plan: 35 payments of \$192 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

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**Jackie Wheeler and Becky Wheeler**  
**RN101798312**  
**Docket No. 2011-1357-PST-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** July 27, 2011

**Date(s) of NOE(s):** July 27, 2011

***Violation Information***

1. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
2. Failed to submit a properly completed UST registration and self-certification form in a timely manner. Specifically, the Respondents did not submit the self-certification form and two of the four USTs at the Facility were in use at the time of the investigation [30 TEX. ADMIN. CODE § 334.8(c)(4)(B) and (c)(5)(B)(ii)].
3. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondents accepted one fuel delivery without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
4. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].
5. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
6. Failed to provide release detection for the suction piping associated with the USTs. Specifically, the triennial piping tightness test was not conducted [30 TEX. ADMIN. CODE § 334.50(b)(2), and TEX. WATER CODE § 26.3475(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondents to:

- a. Immediately:

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**Jackie Wheeler and Becky Wheeler**  
**RN101798312**  
**Docket No. 2011-1357-PST-E**

- i. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form;
  - ii. Begin maintaining all UST records;
- b. Within 30 days:
- i. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;
  - ii. Implement a release detection method for all USTs at the Facility and conduct the triennial piping tightness test; and
- c. Within 45 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Debra Barber, Enforcement Division, MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Jackie Wheeler, Owner, Faught Country Store, 59 County Road 44105, Paris, Texas 75462  
Becky Wheeler, Owner, Faught Country Store, 59 County Road 44105, Paris, Texas 75462  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	1-Aug-2011	<b>Screening</b>	4-Aug-2011	<b>EPA Due</b>	
	<b>PCW</b>	4-Aug-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Jackie Wheeler and Becky Wheeler		
<b>Reg. Ent. Ref. No.</b>	RN101798312		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	42212	<b>No. of Violations</b>	5
<b>Docket No.</b>	2011-1357-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Mike Pace
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$7,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$140
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Notes: Enhancement for one NOV with dissimilar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondents do not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$1,588  
Approx. Cost of Compliance \$3,538

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,140
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	21.4%	<b>Adjustment</b>	\$1,527
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 5.

<b>Final Penalty Amount</b>	\$8,667
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$8,667
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$1,733
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$6,934
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Screening Date 4-Aug-2011

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PCW

Respondent Jackie Wheeler and Becky Wheeler

Policy Revision 2 (September 2002)

Case ID No. 42212

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101798312

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 2%

Screening Date 4-Aug-2011

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Policy Revision 2 (September 2002)

Case ID No. 42212

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101798312

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks ("USTs").

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 2

365 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,000

Two single events (one event per active UST) are recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1,386

Violation Final Penalty Total \$2,476

This violation Final Assessed Penalty (adjusted for limits) \$2,476

# Economic Benefit Worksheet

**Respondent** Jackie Wheeler and Becky Wheeler  
**Case ID No.** 42212  
**Reg. Ent. Reference No.** RN101798312  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$1,320	27-Jul-2010	27-Jul-2011	1.00	\$66	\$1,320	\$1,386
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to provide financial assurance for two USTs (at \$660 per tank). The date required is one year prior to the record review date and the final date is the record review date.

Approx. Cost of Compliance

\$1,320

**TOTAL**

\$1,386

Screening Date 4-Aug-2011

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PCW

Respondent Jackie Wheeler and Becky Wheeler

Policy Revision 2 (September 2002)

Case ID No. 42212

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101798312

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(4)(B) and (c)(5)(B)(ii)

Violation Description

Failed to submit a properly completed UST registration and self-certification form in a timely manner. Specifically, the Respondents did not submit the self-certification form and two of the four USTs at the Facility were in use at the time of the investigation.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

8 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

Violation Base Penalty \$1,000

One annual event is recommended based on documentation of the violation during the July 27, 2011 record review.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,238

This violation Final Assessed Penalty (adjusted for limits) \$1,238

# Economic Benefit Worksheet

**Respondent** Jackie Wheeler and Becky Wheeler

**Case ID No.** 42212

**Reg. Ent. Reference No.** RN101798312

**Media** Petroleum Storage Tank

**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$100	27-Jul-2011	4-Feb-2012	0.53	\$3	n/a	\$3
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to accurately prepare and submit a UST registration and self-certification form and obtain a current TCEQ delivery certificate. The date required is the record review date and the final date is the estimated compliance date.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 4-Aug-2011

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PCW

Respondent Jackie Wheeler and Becky Wheeler

Policy Revision 2 (September 2002)

Case ID No. 42212

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101798312

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

## Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondents accepted one fuel delivery without a delivery certificate.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			x	

## &gt;&gt; Programmatic Matrix

Falsification				Percent
	Major	Moderate	Minor	
				0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV		NOV to EDPRP/Settlement Offer
	Extraordinary	Ordinary	
N/A	x		(mark with x)

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$619

This violation Final Assessed Penalty (adjusted for limits) \$619

# Economic Benefit Worksheet

**Respondent** Jackie Wheeler and Becky Wheeler  
**Case ID No.** 42212  
**Reg. Ent. Reference No.** RN101798312  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in violation no. 2.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

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PCW

Respondent Jackie Wheeler and Becky Wheeler

Policy Revision 2 (September 2002)

Case ID No. 42212

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101798312

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

## Violation Description

Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

8 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended based on the documentation of the violation during the July 27, 2011 record review.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV		NOV to EDPRP/Settlement Offer
	Extraordinary	Ordinary	
N/A	X		(mark with x)

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$13

Violation Final Penalty Total \$1,238

This violation Final Assessed Penalty (adjusted for limits) \$1,238

# Economic Benefit Worksheet

**Respondent** Jackie Wheeler and Becky Wheeler

**Case ID No.** 42212

**Reg. Ent. Reference No.** RN101798312

**Media** Petroleum Storage Tank

**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	27-Jul-2011	4-Feb-2012	0.53	\$13	n/a	\$13
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to maintain UST records. The date required is the record review date and the final date is the estimated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$500

**TOTAL**

\$13

Screening Date 4-Aug-2011

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PCW

Respondent Jackie Wheeler and Becky Wheeler

Policy Revision 2 (September 2002)

Case ID No. 42212

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101798312

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2), and Tex. Water Code § 26.3475(b) and (c)(1)

## Violation Description

Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the suction piping associated with the USTs. Specifically, the triennial piping tightness test was not conducted.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

8 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on the documentation of the violation during the July 27, 2011 record review to the August 4, 2011 screening date.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

x

(mark with x)

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$187

Violation Final Penalty Total \$3,095

This violation Final Assessed Penalty (adjusted for limits) \$3,095

# Economic Benefit Worksheet

Respondent Jackie Wheeler and Becky Wheeler  
 Case ID No. 42212  
 Reg. Ent. Reference No. RN101798312  
 Media Petroleum Storage Tank  
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	27-Jul-2011	4-Mar-2012	0.61	\$45	n/a	\$45

Notes for DELAYED costs

The estimated cost of monitoring the USTs for releases. The date required is the record review date and the final date is the expected date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$118	27-Jul-2008	27-Jul-2011	3.92	\$23	\$118	\$141
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the triennial piping tightness test. The date required is three years prior to the record review date and the final date is the record review date.

Approx. Cost of Compliance

\$1,618

TOTAL

\$187

# Compliance History

Customer/Respondent/Owner-Operator: CN600974943 Becky Wheeler Classification: AVERAGE Rating: 1.00  
 Regulated Entity: RN101798312 Faught Country Store Classification: AVERAGE Site Rating: 1.00  
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 33370  
 REGISTRATION  
 Location: 59 COUNTY ROAD 44105, PARIS, TX, 75462  
 TCEQ Region: REGION 05 - TYLER  
 Date Compliance History Prepared: August 02, 2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: August 02, 2006 to August 02, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Mike Pace Phone: (817) 588-5933

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/01/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
 1 02/22/2007 (540842)  
 2 04/13/2007 (555377)  
 3 07/27/2011 (922532)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
 Date: 02/23/2007 (540842) CN600974943  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  
 Description: Failure to amend the TCEQ PST registration information to reflect the current status of the USTs located at the Faught Country Store.
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# Compliance History

Customer/Respondent/Owner-Operator: CN603153180 Wheeler, Jackie Classification: AVERAGE Rating: 1.00  
Regulated Entity: RN101798312 Faught Country Store Classification: AVERAGE Site Rating: 1.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 33370  
REGISTRATION  
Location: 59 COUNTY ROAD 44105, PARIS, TX, 75462  
TCEQ Region: REGION 05 - TYLER  
Date Compliance History Prepared: August 02, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 02, 2006 to August 02, 2011  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Mike Pace Phone: (817) 588-5933

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
JACKIE WHEELER AND  
BECKY WHEELER  
RN101798312**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-1357-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jackie Wheeler and Becky Wheeler ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own a property with four underground storage tanks ("USTs") at 59 County Road 44105 in Paris, Lamar County, Texas (the "Facility").
2. The Respondents' four USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about August 1, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eight Thousand Six Hundred Sixty-Seven Dollars (\$8,667) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Two Hundred Fourteen Dollars

(\$214) of the administrative penalty and One Thousand Seven Hundred Thirty-Three Dollars (\$1,733) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Seven Hundred Twenty Dollars (\$6,720) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Ninety-Two Dollars (\$192) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondents to meet the payment schedule of this Agreed Order constitutes the failure by the Respondents to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owners of the Facility, the Respondents are alleged to have:

1. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during a record review conducted on July 27, 2011.
2. Failed to submit a properly completed UST registration and self-certification form in a timely manner, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(B) and (c)(5)(B)(ii), as

documented during a record review conducted on July 27, 2011. Specifically, the Respondents did not submit the self-certification form and two of the four USTs at the Facility were in use at the time of the investigation.

3. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during a record review conducted on July 27, 2011. Specifically, the Respondents accepted one fuel delivery without a delivery certificate.
4. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during a record review conducted on July 27, 2011.
5. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during a record review conducted on July 27, 2011.
6. Failed to provide release detection for the suction piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2), and TEX. WATER CODE § 26.3475(b), as documented during a record review conducted on July 27, 2011. Specifically, the triennial piping tightness test was not conducted.

### **III. DENIALS**

The Respondents generally deny each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jackie Wheeler and Becky Wheeler, Docket No. 2011-1357-PST-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order:
  - i. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8; and
  - ii. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10.
- b. Within 30 days after the effective date of this Agreed Order:
  - i. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815; and
  - ii. Implement a release detection method for all USTs at the Facility and conduct the triennial piping tightness test, in accordance with 30 TEX. ADMIN. CODE § 334.50.
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a.i. through 3.b.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Jackie Wheeler and Becky Wheeler  
DOCKET NO. 2011-1357-PST-E  
Page 6

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director

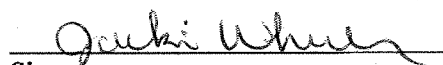
11/30/12  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

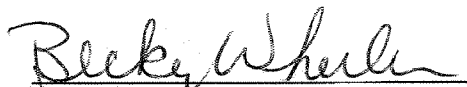
In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

11-17-11  
Date

Jackie Wheeler  
Name (Printed or typed)  
Authorized Representative of  
Jackie Wheeler

\_\_\_\_\_  
Title

  
Signature

11-18-11  
Date

Becky Wheeler  
Name (Printed or typed)  
Authorized Representative of  
Becky Wheeler

\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.